6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2019-0031; FRL-10007-82-Region 5]

Air Plan Approval; Illinois; Reasonable Further Progress Plan and Other Plan Elements for the Chicago Nonattainment Area for the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Illinois State Implementation Plan (SIP) to meet the base year emissions inventory, reasonable further progress (RFP), RFP contingency measures, and motor vehicle inspection and maintenance (I/M) requirements of the Clean Air Act (CAA) for the Illinois portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin area (Chicago area) for the 2008 ozone national ambient air quality standard (NAAQS or standard). EPA is also proposing to approve the 2017 transportation conformity motor vehicle emissions budgets (MVEBs) for the Illinois portion of the Chicago area for the 2008 ozone NAAQS. EPA is proposing to approve the state's submission as a SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations because it satisfies the emissions inventory, RFP, RFP contingency measures, I/M, and

transportation conformity requirements for areas classified as moderate nonattainment for the 2008 ozone NAAQS. Final approval of the Illinois SIP as meeting the I/M and RFP requirements of the CAA for the 2008 ozone NAAQS will permanently stop the Federal Implementation Plan (FIP) clocks for those specific elements, which were triggered by EPA's December 11, 2017 finding that Illinois failed to submit certain required SIP elements for the 2008 ozone NAAQS.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2019-0031, at http://www.regulations.gov, or via email to aburano.douglas@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment

contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit http://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767, dagostino.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the Background for This Action?

A. Background on the 2008 Ozone Standard

On March 27, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm).[1] Promulgation of a revised NAAQS triggers a requirement for EPA to designate all areas of the country as nonattainment, attainment, or unclassifiable for the NAAQS. For the ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation.[2] Ozone nonattainment areas are classified based on the severity of their ozone levels as determined based on the area's "design value," which represents air quality in the area for the most recent 3 years. The classifications for ozone nonattainment areas are marginal, moderate, serious, severe, and extreme.[3]

Areas that EPA designates nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and the ozone-specific planning requirements of CAA section 182. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For marginal areas, a state is required to submit a baseline emissions inventory, adopt provisions into the SIP requiring emissions statements from

[1]73 FR 16436, codified at 40 CFR 50.15.
[2]CAA sections 107(d)(1) and 181(a)(1).
[3]CAA section 181(a)(1).

stationary sources, and implement a nonattainment New Source Review (NSR) program for the relevant ozone NAAQS.[4] For moderate areas, a state needs to comply with the marginal area requirements, plus additional moderate area requirements, including the requirement to submit a modeled demonstration that the area will attain the NAAQS as expeditiously as practicable but no later than 6 years after designation, the requirement to submit an RFP plan, the requirement to adopt and implement certain emissions controls, such as Reasonably Available Control Technology (RACT) and I/M, and the requirement for greater emissions offsets for new or modified major stationary sources under the state's nonattainment NSR program.[5]

B. Background on the Chicago 2008 Ozone Nonattainment Area

On June 11, 2012,[6] EPA designated the Chicago area as a marginal nonattainment area for the 2008 ozone NAAQS. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and part of Grundy and Kendall Counties in Illinois; Lake and Porter Counties in Indiana; and part of Kenosha County in Wisconsin. On May 4, 2016,[7] pursuant to section 181(b)(2) of the CAA, EPA determined that the Chicago area failed to attain the 2008 ozone NAAQS by the July 20, 2015,

[4]CAA section 182(a).
[5]CAA section 182(b).
[6]77 FR 34221, effective July 20, 2012.
[7]81 FR 26697.

marginal area attainment deadline and thus reclassified the area from marginal to moderate nonattainment. In that action, EPA established January 1, 2017, as the due date for the state to submit all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas. On August 23, 2019,[8] pursuant to section 181(b)(2) of the CAA, EPA determined that the Chicago area failed to attain the 2008 ozone NAAQS by the July 20, 2018, moderate area attainment deadline and thus reclassified the area from moderate to serious nonattainment. In that action, EPA established August 3, 2020 and March 23, 2021 as the due dates for serious area nonattainment plan SIP submissions for newly reclassified areas. Today's action does not address serious area nonattainment planning requirements.

B. Background on EPA's Finding of Failure to Submit SIPs for the 2008 Ozone NAAQS

On December 11, 2017, EPA found that three states failed to submit SIP revisions in a timely manner to satisfy certain moderate nonattainment plan requirements for the 2008 ozone NAAQS.[9] EPA found, *inter alia*, that Illinois failed to submit a SIP to meet the following requirements of the CAA for the Chicago area: a basic I/M program, contingency measures for volatile organic compounds (VOC) and oxides of nitrogen (NOx), a

[8] 84 FR 44238.
[9] 82 FR 58118 (effective January 10, 2018).

nonattainment NSR program for moderate nonattainment areas,[10] an ozone attainment demonstration, RACT non-control techniques guidelines for major stationary sources of VOC, RACT for major stationary sources of NOx, and RFP for VOC and NOx.

This finding established certain deadlines for the imposition of sanctions if the states do not submit timely SIP revisions addressing the requirements for which EPA made the finding and for EPA to promulgate a FIP to address any outstanding SIP requirements. Specifically, Illinois was required to submit a complete SIP addressing the deficiencies that were the basis for the finding within 18 months of the effective date of the findings (i.e., July 10, 2019) so as to avoid triggering, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) in the affected nonattainment area. Additionally, EPA is required to promulgate a FIP for the affected nonattainment area if EPA does not take final action to approve the state's submittal within 2 years of the effective date of the findings (i.e., January 10, 2020).

[10] On May 23, 2018, IEPA submitted a SIP revision requesting EPA's approval of IEPA's certification that its existing SIP approved Nonattainment NSR regulations fully satisfy the Nonattainment NSR requirements set forth in 40 CFR 51.165 for both marginal and moderate ozone nonattainment areas for the 2008 ozone NAAQS. On February 6, 2019 (84 FR 2063), EPA approved IEPA's certification. This final action permanently stopped the FIP clock triggered by EPA's December 11, 2017 finding.

On January 10, 2019, the Illinois Environmental Protection Agency (IEPA) submitted a SIP revision addressing moderate area requirements for the Illinois portion of the Chicago area for the 2008 ozone NAAQS. On March 7, 2019, EPA found that the SIP revision fulfilled the completeness criteria in 40 CFR part 51, appendix V.[11] Through the completeness finding, EPA determined that the deficiencies which formed the basis for the December 11, 2017, finding had been corrected and, as a result, the sanctions clock at CAA section 179(a) and (b) was permanently stopped.

II. What is EPA's Evaluation of the Illinois Submittal?

IEPA's January 10, 2019, SIP revision for the Chicago area contains a number of nonattainment plan elements, including a revised 2011 base year emissions inventory for VOC and NOx, a 15 percent RFP plan, a 3 percent contingency measure plan, 2017 VOC and NOx motor vehicle emissions budgets, a VOC RACT certification and negative declarations, an enhanced I/M certification, an attainment demonstration, a reasonably available control measure (RACM) demonstration, and a NOx RACT waiver request. In addition, on December 5, 2018 IEPA had submitted to EPA support for a Negative Declaration for the Oil and Gas Industry, which is the subject of a December 16, 2016

[11] Letter from Edward Nam, Director, Air & Radiation Division, EPA Region 5 to Julie Armitage, Chief, Bureau of Air, IEPA.

Control Technology Guideline. *See* 81 FR 74798 (October 27, 2016). EPA will be addressing the attainment demonstration, the contingency measure plan as it applies to the attainment demonstration, the RACM demonstration, NOx RACT submission, and VOC RACT SIP submissions in a separate action.

A. Revised 2011 Base Year Emissions Inventory

CAA sections 172(c)(3) and 182(a)(1), 42 U.S.C. 7502(c)(3) and 7511a(a)(1), require states to develop and submit, as SIP revisions, comprehensive, accurate, and complete emissions inventories for all areas designated as nonattainment for the ozone NAAQS. An emissions inventory for ozone is an estimation of actual emissions of VOC and NOx from all sources located in the relevant designated nonattainment area. For the 2008 ozone NAAQS, EPA has recommended that states use 2011 as a base year for the emissions estimates.[12] On March 7, 2016,[13] EPA approved the 2011 base year emissions inventory submitted by IEPA on September 3, 2014, for the Illinois portion of the Chicago area. IEPA included a revised 2011 base year emissions inventory in its January 10, 2019, submission. The revised 2011 base year emissions inventory only modifies the emissions estimates for the on-road and non-road mobile sectors, with emissions

[12]78 FR 34178, 34190 (June 6, 2013).
[13]81 FR 11671.

estimates for point and area sectors remaining unchanged from the inventory approved by EPA.

In the original 2011 base year emissions inventory approved by EPA, Illinois calculated 2011 on-road mobile emissions using the 2010 version of the MOVES model. The current version of the MOVES model is 2014a. In addition, when compiling the 2014 inventory, IEPA used updated estimates of vehicle registrations (fleet mix) and vehicle miles traveled and found significant differences from the 2011 values. To maintain consistency of the inventory for comparison to future years, the 2014 VMT and vehicle population from 2014 was back-casted to 2011, using the same growth factor that was used for projecting the vehicle population and VMT from 2014 to 2017, 1.2 percent per year. With this data, MOVES2014a was run to obtain 2011 emissions.

The 2010 version of the MOVES model was also used to calculate non-road emissions in the original base year inventory. To maintain consistency, the 2011 non-road inventory was recalculated using MOVES2014a.[14] Because it is important to maintain a consistent methodology when comparing emissions inventories from different years and because MOVES2014a is the current version of the model, EPA is proposing to approve the

[14] MOVES does not calculate off-road emissions for commercial marine vessels, aircraft, or rail locomotives. Emission estimates for these source types remain unchanged from the original 2011 base year inventory.

updated 2011 base year emissions inventory as a revision to the Illinois SIP.

Table 1. Revised 2011 Base Year Emissions Inventory in Tons Per Summer Day (tpsd)

County	VOC					Nox				
	Point	Area	On-road	Non-road	Total	Point	Area	On-road	Non-road	Total
Cook	27.01	123.60	86.53	52.60	289.74	42.52	14.60	182.22	78.83	318.17
DuPage	4.11	25.77	20.19	16.38	66.45	5.49	4.53	45.63	19.19	74.85
Grundy (P)	1.87	0.51	0.23	0.66	3.26	5.39	0.06	0.91	0.99	7.35
Kane	3.25	13.45	10.48	8.37	35.55	3.80	1.77	22.27	14.41	42.25
Kendall (P)	0.50	1.33	0.70	0.92	3.45	0.77	0.19	1.53	1.08	3.57
Lake	2.14	19.35	14.69	16.89	53.07	13.74	3.52	32.47	15.01	64.74
McHenry	1.21	8.46	6.86	5.39	21.92	0.86	1.17	13.99	8.78	24.80
Will	8.16	17.57	14.56	9.10	49.40	47.42	1.30	33.61	17.80	100.13
Total	48.26	210.04	154.24	110.31	522.85	119.99	27.13	332.64	156.10	635.86

B. 15 percent RFP Plan and 3 percent Contingency Plan

1. Background

The CAA requires that states with areas designated as nonattainment for ozone achieve RFP toward attainment of the ozone NAAQS. CAA section 172(c)(2) contains a general requirement that nonattainment plans must provide for emissions reductions that meet RFP. For areas classified moderate and above, section 182(b)(1) imposes a more specific RFP requirement that a state had to meet through a 15 percent reduction in VOC emissions from the baseline anthropogenic emissions within 6 years after November 15, 1990. The state must meet the 15 percent requirement by the end of the 6-year period, regardless of when the nonattainment area attains the NAAQS. As with other nonattainment plan requirements for more recent iterations of

the ozone NAAQS, EPA has promulgated regulations and guidance to interpret the statutory requirements of the CAA.

EPA's final rule to implement the 2008 ozone NAAQS (SIP Requirements Rule),[15] addressed, among other things, the RFP requirements as they apply to areas designated nonattainment and classified as moderate for the 2008 ozone NAAQS.[16] EPA interprets the 15 percent VOC emission reduction requirement in CAA section 182(b)(1) such that a state that has already met the 15 percent requirement for VOC for an area under either the 1-hour ozone NAAQS or the 1997 8-hour ozone NAAQS would not have to fulfill that requirement through reductions of VOC again. Instead, EPA is interpreting CAA section 172(c)(2) to require states with such areas to obtain 15 percent ozone precursor emission reductions (VOC and/or NOx) over the first 6 years after the baseline year for the 2008 ozone NAAQS. The state previously met the 15 percent VOC reduction requirement of CAA section 182(b)(1) for the Illinois portion of the Chicago area under the 1-hour ozone NAAQS. Therefore, the state may rely upon both VOC and NOx emissions reductions to meet the RFP requirement for the 2008 ozone NAAQS.

EPA's SIP Requirements Rule indicates the base year for the 2008 ozone NAAQS, for which areas were designated nonattainment

[15] 80 FR 12264 (March 6, 2015).
[16] *Ibid*, at 12271 and 40 CFR 51.1110.

effective July 20, 2012, can be 2011 or a different year of the states choosing. However, states selecting a pre-2011 alternate baseline year must achieve 3 percent emission reductions each year after the initial 6-year period has concluded up to the beginning of the attainment year. For a multi-state area, states must agree on the same base year. Illinois, Indiana, and Wisconsin have selected the EPA-recommended base year of 2011.[17]

States may not take credit for VOC or NOx reductions occurring from sources outside the nonattainment area for purposes of meeting the 15 percent RFP and 3 percent RFP requirements of CAA sections 172(c)(2), 182(b)(1) and 182(c)(2)(B). The Illinois 15 percent RFP represents emissions reductions which occurred in the Illinois portion of the nonattainment area from 2011 to 2017, thereby satisfying this requirement.

Except as specifically provided in section 182(b)(1)(D) of the CAA, all state control measures approved into the SIP or Federal measures that provide emissions reductions that occur

[17] On February 16, 2018, the D.C. Circuit Court issued a decision in South Coast Air Quality Management District v. EPA, 882 F.3d 1138 (D.C. Cir. 2018), in which several parties challenged different aspects of EPA's SIP Requirements Rule for the 2008 Ozone NAAQS. In this decision, the Court upheld 2011 as a reasonable baseline year for the 2008 ozone NAAQS but vacated the provision allowing for an alternate year. Because Wisconsin, Illinois, and Indiana have selected 2011 as the baseline year, the decision does not impact the Illinois RP plan.

after the baseline emissions inventory year are creditable for purposes of the RFP requirements, provided that the reductions meet the standard requirements for creditability which include being enforceable, quantifiable, permanent, and surplus in terms of not having previously been counted toward RFP.

States must also include contingency measures in their nonattainment plans. The contingency measures required for areas classified as moderate and above under CAA sections 172(c)(9) and 182(c)(9) must provide for the implementation of specific measures if the area fails to attain or to meet any applicable RFP milestone. The state must submit these measures for approval by EPA into the SIP as adopted measures that would take effect without further rulemaking action by the state or the EPA upon a determination that an area failed to attain or to meet the applicable milestone. Per EPA guidance for purposes of the ozone NAAQS, contingency measures should represent one year's worth of RFP progress, amounting to reductions of at least 3 percent of the baseline emissions inventory for the nonattainment area.[18] The purpose of the contingency measures is to provide additional emission reductions in the event of a failure to attain or meet any applicable milestone, which would

[18] See the SIP Requirements Rule (80 FR at 12285) and April 16, 1992 General Preamble section III.A.3.c (57 FR 13498 at 13511).

occur while the state is revising its SIP for the area to rectify the failure to attain or to meet RFP requirements.[19]

Regarding the contingency measures, EPA's prior guidance for purposes of the ozone NAAQS specifies that some portion of the contingency measures must include VOC reductions. This previous limitation is no longer necessary in all areas. In particular, EPA has concluded that states with nonattainment areas classified as moderate and above that have already completed the initial 15 percent VOC reduction required by CAA section 182(b)(1)(A)(i), can meet the contingency measures requirement based entirely on NOx controls if that is what the state's analyses have demonstrated would be most effective in bringing the area into attainment. There is no minimum VOC requirement. Also, EPA is continuing its long-standing policy that allows states to use promulgated Federal measures as contingency measures as long as they provide emission reductions in the relevant years in excess of those needed for attainment or RFP.[20]

2. Illinois's 15 percent RFP and 3 percent RFP Contingency Measures Plan

To demonstrate that the Illinois portion of the Chicago area has achieved 15 percent RFP over the 6-year attainment

[19] 80 FR 12285.
[20] *Id.*

planning period, Illinois is using a 2011 base year inventory and a 2017 RFP inventory. Illinois used growth factors to project emissions from 2011 to 2017. For point and area source categories along with non-road categories not calculated by the MOVES model, growth factors were primarily derived using Version 6.2 of the "Notice of Data Availability of the Environmental Protection Agency's Updated Ozone Transport Modeling Data for the 2008 Ozone NAAQS" (NODA). This data set projected 2011 emissions to 2017 and 2025. For large NOx emitting units, however, a growth factor was applied based on actual 2011 to 2016 growth in emissions as reported to the IEPA. In addition, when the NODA predicted that a coal-firing emission unit would shut down but it actually switched to natural gas, the state conservatively assumed a growth factor of 1.0. Two coal-fired sources were shut down in 2012. These sources were updated to zero in the 2017 inventory.

Illinois calculated on-road emissions using EPA's MOVES2014a model. Vehicle population and vehicle miles traveled were assumed to increase at a rate of 1.2 percent per year from 2011. Off-road emissions other than commercial marine vessels, aircraft, and rail locomotive were also calculated using the MOVES2014a model. The MOVES model incorporates a number of Federal emissions control programs into its projections. These emissions reduction measures are permanent and enforceable and

are implemented in the nonattainment area. The MOVES model assumed increases in vehicle or equipment population and usage while projecting decreases in ozone precursor emissions from 2011 to 2017. The estimated emissions reductions are therefore not due to reductions in source activity, but to the implementation of control measures. Tables 2 and 3 list the Federal permanent and enforceable control programs modeled by the MOVES model.

Table 2. Federal On-Road Emission Control Programs Modeled by MOVES

On-road Control Program	Pollutants	Model year*	Regulation
Passenger vehicles, SUVs, and light duty trucks – emissions and fuel standards	VOC & NOx	2004-09+ (Tier 2) 2017+ (Tier 3)	40 CFR parts 85 & 86
Light-duty trucks and medium duty passenger vehicle – evaporative standards	VOC	2004-10	40 CFR part 86
Heavy-duty highway compression engines	VOC & NOx	2007+	40 CFR part 86
Heavy-duty spark ignition engines	VOC & NOx	2005-08+	40 CFR part 86
Motorcycles	VOC & NOx	2006-10 (Tier 1 & 2)	40 CFR part 86
Mobile Source Air Toxics – fuel formulation, passenger vehicle emissions, and portable container emissions	Organic Toxics & VOC	2009-15**	40 CFR parts 59, 80, 85, & 86
Light duty vehicle corporate average fuel economy standards	Fuel efficiency (VOC & NOx)	2012-16 & 2017-25	40 CFR part 600

* The range in model years affected can reflect phasing of requirements based on engine size or initial years for replacing earlier tier requirements.
** The range in model years reflects phased implementation of fuel, passenger vehicle, and portable container emission requirements as well as the phasing by vehicle size and type.

Table 3. Federal Non-Road Emission Control Programs Modeled by the MOVES model or considered in development of the MAR inventory

Nonroad Control Program*	Pollutants	Model Year**	Regulation
Aircraft	VOC & NOx	2000 – 2005+	40 CFR Part 87
Compression Ignition	VOC & NOx	2000 – 2015+ (Tier	40 CFR parts 89

		4)	& 1039
Large Spark Ignition	VOC & NOx	2007+	40 CFR part 1048
Locomotive Engines	VOC & NO_x	2012 – 2014 (Tier 3) 2015+ (Tier 4)	40 CFR part 1033
Marine Compression Ignition	VOC & NO_x	2012 – 2018	40 CFR part 1042
Marine Spark Ignition	VOC & NOx	2010+	40 CFR part 1045
Recreational Vehicle	VOC & NOx	2006 – 2012 (Tiers 1 – 3)	40 CFR part 1051
Small Spark Ignition Engine < 19 Kw – emission standards	VOC & NOx	2005 – 2012 (Tiers 2 & 3)	40 CFR parts 90 & 1054
Small Spark Ignition Engine < 19 Kw – evaporative standards	VOC	2008 – 2016	40 CFR parts 1045, 54, & 60

* Compression ignition applies to diesel non-road compression engines including engines operated in construction, agricultural, and mining equipment. Recreational vehicles include snowmobiles, off-road motorcycles, and all-terrain vehicles. Small spark ignition engines include engines operated in lawn and hand-held equipment.
** The range in model years affected can reflect phasing of requirements based on engine size or initial years for replacing earlier tier requirements.

Table 4 shows Illinois's 2017 projected emissions inventory.

Table 4. Projected 2017 Emissions Inventory (tpsd)

County	VOC					Nox				
	Point	Area	On-road	Non-road	Total	Point	Area	On-road	Non-road	Total
Cook	26.96	116.65	44.63	38.40	226.64	29.33	14.50	89.71	61.96	195.50
DuPage	4.07	22.98	10.60	12.22	49.87	6.77	4.64	22.72	12.94	47.07
Grundy (P)	1.91	0.48	0.11	0.44	2.94	9.81	0.06	0.45	1.45	11.76
Kane	3.22	12.12	5.43	6.28	27.05	3.36	1.84	11.00	9.69	25.89
Kendall (P)	0.51	1.27	0.37	0.67	2.81	0.87	0.19	0.76	0.73	2.55
Lake	2.14	17.04	7.70	12.45	39.33	15.93	3.74	16.17	11.36	47.20
McHenry	1.14	7.77	3.65	3.90	16.46	0.78	1.21	6.97	5.73	14.69
Will	8.16	16.49	7.59	6.69	38.92	56.72	1.25	16.62	13.43	88.01
Total	48.10	194.79	80.08	81.05	404.02	123.57	27.42	164.40	117.28	432.67

Illinois submitted documentation showing that emission reductions in the Illinois portion of the Chicago area met the 15 percent RFP and 3 percent RFP contingency measures requirements through shutdown of the two coal-fired electric generating units and Federal permanent and enforceable control

measures within the on-road and non-road mobile source sectors. Table 5 shows the calculations Illinois used to determine that these reductions meet the RFP and RFP contingency measures requirements.

Table 5. 2017 RFP and Contingency Target Level Calculations (emissions in tpsd)

Description	Formula	VOC	NOx
A. 2011 Base Year Inventory		522.85	635.86
B. RFP Reductions totaling 15%		5%	10%
C. RFP Emissions Reductions Required Between 2011 & 2017	A*B	26.14	63.59
D. RFP Target Level for 2017	A-C	496.71	572.27
E. Contingency Percentage		0%	3%
F. Contingency Emission Reduction Requirements	A*E	0	19.08
G. RFP + Contingency Reduction Requirements	C+F	26.14	82.66
H. Reductions between 2011 and 2017			
Federal on-road control programs		74.16	168.24
Federal non-road control programs		29.26	38.82
Crawford shutdown		negligible	8.11
Fisk shutdown		negligible	3.62
Total		103.42	218.79
I. Adjustments to reductions			
Agency hold-back		19.00	95.00
Allocation to mobile source budget		52.92	39.60
Total		71.92	134.60
J. Creditable reduction	H-I	31.50	84.19
K. Compare creditable reductions to RFP and contingency reduction requirements to determine if at least 18% reduction is achieved	J≥G	Yes	Yes
L. RFP + Contingency Target Level	A-G	496.71	553.20
M. 2017 Projected Emissions		404.02	432.67
N. Compare RFP & Contingency Target with 2017 Projected Emissions to determine if RFP and Contingency Measure Requirements Are Met	M≤L?	Yes	Yes

Illinois has demonstrated that emission reductions attributable to permanent and enforceable measures will result in at least an 18 percent reduction (15 percent for RFP and 3 percent for contingency measure requirements) in the Illinois portion of the Chicago area over the 6-year attainment planning time period, starting with the 2011 base year. Thus, EPA is

proposing to approve the Illinois 15 percent RFP and 3 percent contingency measure plan for the Illinois portion of the Chicago area for the 2008 ozone standard.

EPA notes that the control measures Illinois is relying upon to meet the RFP contingency measures requirement are already implemented. Contingency measures may include Federal measures and local measures already scheduled for implementation, as long as the resulting emission reductions are in excess of those needed for attainment or to meet other nonattainment plan requirements. EPA interprets the CAA not to preclude a state from implementing such measures before they are triggered by a failure to meet RFP or failure to attain. For more information on contingency measures, see the General Preamble (57 FR 13510) and the SIP Requirements Rule (80 FR at 12285).

The appropriateness of relying on already-implemented control measures to meet the contingency measures requirement has been addressed in two Federal circuit court decisions. *See Louisiana Environmental Action Network (LEAN) v. EPA*, 382 F.3d 575, 586 (5th Cir. 2004); *Bahr v. United States EPA*, 836 F.3d 1218 (9th Cir. 2016), *cert. denied*, 199 L. Ed. 2d 525, 2018 U.S. LEXIS 58 (Jan. 8, 2018). EPA believes that the language of CAA section 172(c)(9) and 182(c)(9) are ambiguous with respect to this issue, and that it is reasonable for the agency to

interpret the statutory language to allow approval of already implemented measures as contingency measures, as long as they meet other parameters such as providing excess emissions reductions that the state has not relied upon to meet other nonattainment plan requirements or in the modeled attainment demonstration in the nonattainment plan for the NAAQS at issue. Until the *Bahr* decision, under EPA's longstanding interpretation of CAA section 172(c)(9) and 182(c)(9), states could rely on control measures that were already implemented (so called "early triggered" contingency measures) as a valid means to meet the CAA's contingency measures requirement. The Ninth Circuit decision in *Bahr* leaves a split among the Federal circuit courts, with the Fifth Circuit upholding the Agency's interpretation of section 172(c)(9) to allow early triggered contingency measures and the Ninth Circuit rejecting that interpretation. The Seventh Circuit in which Illinois is located has not addressed the issue, nor has the Supreme Court or any other circuit court other than the Fifth and Ninth.

Because there is a split in the Federal circuits on this issue, EPA expects that states located in circuits other than the Ninth may elect to rely on EPA's longstanding interpretation of CAA section 172(c)(9) allowing early triggered measures to be approved as contingency measures, in appropriate circumstances. EPA's revised Regional Consistency regulations pertaining to SIP

provisions authorize the Agency to follow this interpretation of section 172(c)(9) in circuits other than the Ninth. *See* 40 CFR part 56. To ensure that early triggered contingency measures appropriately satisfy all other relevant CAA requirements, EPA will carefully review each such measure, and intends to consult with states considering such measures early in the attainment plan development process.

As shown above, the emissions reductions projected through 2017 are sufficient to meet the requirements for RFP contingency measures, consistent with EPA's interpretation of the CAA to allow approval of already implemented control measures as contingency measures in states outside the Ninth Circuit. Therefore, we propose approval of the contingency measures submitted by the state in the nonattainment plan for the Illinois portion of the Chicago area.

C. 2017 MVEBs

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must "conform" to (i.e., be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay timely attainment of the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth EPA policy,

criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP.

Under the CAA, states are required to submit, at various times, control strategy plans for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas.[21] These control strategy plans (including RFP plans and attainment plans for purposes of the ozone NAAQS) and maintenance plans must include MVEBs for the relevant criteria pollutant or its precursor pollutants (VOC and NOx for ozone) to address pollution from on-road transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will meet an RFP milestone or provide for attainment or maintenance of the NAAQS.[22] The MVEB serves as a ceiling on emissions from an area's planned transportation system.[23]

When reviewing control strategy or maintenance plan submissions, EPA must affirmatively find that the MVEBs

[21] See the SIP requirements for the 2008 ozone standard in the SIP Requirements Rule (80 FR 12264).
[22] 40 CFR 93.101.
[23] The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, subsequent to initially establishing a MVEB in the SIP.

contained therein are adequate for use in determining transportation conformity. Once EPA affirmatively finds that the submitted MVEBs are adequate for transportation purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: public notification of a SIP submission; provision for a public comment period; and EPA's adequacy determination. *See* 40 CFR 93.118(f). This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004.[24] Additional information on the adequacy process for transportation

[24] 69 FR 40004.

conformity purposes is available in a June 30, 2003, proposed rule titled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes."[25]

The Illinois RFP and contingency measure plan includes VOC and NOx MVEBs for the Illinois portion of the Chicago area for 2017. EPA reviewed the VOC and NOx MVEBs through the adequacy process. Illinois's January 10, 2019, RFP and contingency measure SIP submission, including the VOC and NOx MVEBs for the Illinois portion of the Chicago area, was available for public comment on EPA's adequacy Web site on February 22, 2019, found at: https://www.epa.gov/state-and-local-transportation/state-implementation-plans-sip-submissions-currently-under-epa. The EPA public comment period on adequacy of the 2017 MVEBs for the Illinois portion of the Chicago area closed on March 25, 2019. No comments on the submittal were received during the adequacy comment period. The submitted RFP and contingency measure plan, which included the MVEBs, was endorsed by the Governor's designee and was subject to a state public hearing. The MVEBs were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The MVEBs were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are

[25] 68 FR 38974, 38984.

consistent with the 15 percent RFP and 3 percent RFP contingency measures requirements of the 2008 8-hour ozone standard.

Table 6. 2017 VOC and NOx MVEBs for the Illinois Portion of the Chicago Area (tpsd).

	2017 On-road Emissions	Allocation of Surplus Reductions to On-road Mobile Sector	2017 MVEBs
VOC	80.08	52.92	133.00
NOx	164.40	39.60	204.00

As shown in Table 6, the 2017 MVEBs exceed the estimated 2017 on-road sector emissions. In an effort to accommodate future variations in travel demand models and vehicle miles traveled forecast, Illinois allocated a portion of the surplus RFP and contingency plan reductions to the mobile sector. Illinois has demonstrated that the Illinois portion of the Chicago area can meet the 15 percent RFP and 3 percent RFP contingency measure requirements of the 2008 ozone NAAQS with mobile source emissions of 133.00 tpsd of VOC and 204.00 tpsd of NOx in 2017, because despite partial allocation of the RFP and RFP contingency measures plan surplus reductions, emissions will remain under 2017 RFP plus contingency measure target levels. EPA has found adequate and is thus proposing to approve the 2017 VOC and NOx MVEBs for use to determine transportation conformity in the Illinois portion of the Chicago area under the 2008 ozone NAAQS because EPA has determined that the area can meet the 15 percent RFP and 3 percent RFP contingency measure requirements

of the 2008 ozone NAAQS with mobile source emissions at the levels of the MVEBs.

D. Motor Vehicle I/M Program Certification

The requirement to adopt a motor vehicle I/M program for moderate ozone nonattainment areas is described in CAA section 182(b)(4), and the regulations for basic and enhanced I/M programs are found at 40 CFR part 51, subpart S. Under these cumulative requirements, states with areas classified as moderate nonattainment for ozone with 1990 Census-defined urbanized populations of 200,000 or more are required to adopt basic I/M programs, while serious and higher classified ozone nonattainment areas outside of the northeast ozone transport region with 1990 Census-defined urbanized populations of 200,000 or more are required to adopt enhanced I/M programs. The Chicago area meets the criteria for mandatory I/M under the 2008 ozone NAAQS.

The Illinois portion of the Chicago area was required to adopt an enhanced I/M program under the 1-hour ozone NAAQS. EPA approved Illinois's enhanced I/M program on February 22, 1999 (64 FR 8517) and on August 13, 2014 (79 FR 47377). The Illinois I/M program for the Chicago nonattainment area is governed by: 625 ILCS 5/13C – Illinois Vehicle Emissions Inspection Law of 2005; 35 Illinois Administrative Code 240 – Emissions Standards and Limitations for Mobile Sources; and 35 Illinois

Administrative Code 276 – Procedures to be followed in the performance of inspections of Motor Vehicle Emissions. These requirements remain in place in the Illinois ozone SIP. In its January 10, 2019, submission, Illinois certified that the existing SIP-approved enhanced I/M program in place for the Chicago area satisfies the I/M requirements of section 182(b)(4) of the CAA for the Illinois portion of the Chicago area for the 2008 ozone NAAQS. We agree that Illinois has satisfied the CAA section 182(b)(4) I/M requirement for the Chicago area for the 2008 ozone NAAQS.

III. What Action is EPA Proposing?

EPA is proposing to approve revisions to the Illinois SIP pursuant to section 110 and part D of the CAA and EPA's regulations because IEPA's January 10, 2019, SIP plan submission satisfies the emissions inventory, RFP, RFP contingency measures, transportation conformity, and I/M requirements of the CAA for the Illinois portion of the Chicago area for the 2008 ozone NAAQS. Final approval of these portions of IEPA's January 10, 2018 SIP revision would permanently stop the FIP clocks triggered by the December 11, 2017 finding with respect to a basic I/M program and RFP. Final approval of these portions of IEPA's submittal will not affect the FIP clocks triggered by the December 11, 2017 finding for the following SIP elements: contingency measures for VOC and NOx, an attainment

demonstration, RACT non-control techniques guidelines for major stationary sources of VOC, and RACT for major stationary sources of NOx.

IV. Statutory and Executive Order Reviews

Under the CAA the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian

reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 8, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

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